

TEXAS BOARD OF ARCHITECTURAL EXAMINERS

Minutes of June 16, 2011 Board Meeting

William P. Hobby Jr. Building, 333 Guadalupe Street

Tower I, Conference Room 225

Austin, TX 78701

9:00 a.m. until completion of business

1. Preliminary Matters

A. Call to Order

Chair Alfred Vidaurri called the meeting of the Texas Board of Architectural Examiners to order at 9:04 a.m.

B. Roll Call

Secretary/Treasurer, Chase Bearden, called the roll.

Present

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| Alfred Vidaurri, Jr. | Chair |
| Charles H. (Chuck) Anastos | Vice-Chair |
| Chase Bearden | Secretary/Treasurer |
| Bert Mijares, Jr. | Member |
| Brandon Pinson | Member |
| Diane Steinbrueck | Member |
| Debra Dockery | Member |
| Paula Miller | Member |
| Sonya Odell | Member |

TBAE Staff Present

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| Cathy L. Hendricks | Executive Director |
| Scott Gibson | General Counsel |
| Glenda Best | Executive Administrative Manager |
| Christine Brister | Staff Services & Human Resources Officer |
| Katherine Crain | Legal Assistant |
| Steve Franz | Investigator |
| Glenn Garry | Communications Manager |
| Mary Helmcamp | Registration Manager |
| Kenneth Liles | Accounting Manager |
| Julio Martinez | Network Specialist |
| Michael Shirk | Managing Litigator |
| Jack Stamps | Managing Investigator |

C. Excused and unexcused absences

None.

D. Determination of a quorum

A quorum was present.

E. Recognition of Guests

Guests were as follows: James Perry, Executive Director for the Texas Society of Architects, Kathy Grant, Texas Society of Architects, Michael Chad Davis, Texas Landscape Architect and Texas Chapter of American Society of Landscape Architects, Priscilla Pipho, Deputy Executive Director for the Texas Board of Professional Engineers, David Howell, Director of Licensing for the Texas Board of Professional Engineers, Ted Ross, Counsel to the Board from the Attorney General's Office, Donna Vining, Texas Association for Interior Design.

F. Chair's Opening Remarks

The Chair thanked everyone including Board members and the audience for attending the Board meeting. He stated that he was pleased that the Texas Board of Architectural Examiners and the Texas Board of Professional Engineers had reached a viable compromise during the legislative session on the overlap issue between the two professions. He stated that the Board had recently had a changing of the guards with three outgoing board members and three new ones coming on Board.

Furthermore, he stated that the staff had suffered a great loss this past spring with the passing of one of the agency's employees, Karla Burkett. He offered condolences over her loss.

He reminded the Board members that they had modified Robert's Rules of Order to reflect that staff may introduce an item, then the Board will entertain it for open discussion, followed by a proposed motion and concluding with a verbal vote. He reminded Board members to recommit to housekeeping resolutions for the Board: arrive on time, do not interrupt a member who has the floor, and always remember everything said in a meeting is recorded even if it is under your breath. Please remember to obtain the floor before speaking and follow the rules of procedure for orderly and efficient meetings.

He introduced the new board members as follows:

Debra J. Dockery, AIA – San Antonio, Texas. Ms. Dockery is an architect replacing former board member James A. Walker.

Paula Ann Miller – The Woodlands, Texas. Ms. Miller is a public member replacing former board member Rosemary Gammon.

Sonya Odell, FASID, RID – Dallas, Texas. Ms. Odell is a registered interior designer replacing former board member Lew Vassberg.

Each new board member gave a synopsis of their background to the board and audience.

3. Approval of the January 24, 2011 Board Meeting Minutes

A MOTION WAS MADE AND SECONDED (Anastos/Mijares) TO APPROVE THE JANUARY 24, 2011 BOARD MEETING MINUTES. THE MOTION PASSED UNANIMOUSLY.

G. Public Comment

The Chair recognized two people who registered for public comment:

Donna Vining, Texas Association for Interior Design. Ms. Vining is a registered interior designer and stated that she wanted to compliment Cathy Hendricks and her Legislative team, Scott Gibson, Glenda Best, and Glenn Garry. She said that the agency had a great culture and organization and her organization appreciated all the help throughout the legislative session.

Priscilla Pipho, Deputy Executive Director for the Texas Board of Professional Engineers. Ms. Pipho stated that the Texas Board of Professional Engineers was here to help on HB 2284 and looked forward to collaboration in making sure that the program was successful.

4. Executive Director Report – Legislative Report/Update

B. Senate Bill 652 – Relating to Governmental Entities subject to the Sunset review process

The Executive Director addressed the Board and stated that Sunset review was scheduled for each agency every 12 years. It is called sunset to determine whether or not the agency needs to be maintained and continued or it needs to be sunseted. TBAE originally had a sunset date of 2015, but the SB 652 changed that date to 2013. In addition, SDSI will also undergo Sunset review in 2013. The Executive Director stated that she was glad both of these would be done at the same time. She encouraged the Board members go to Sunset's website and look at the previous report. She stated that Sunset's review gives the agency an opportunity to improve regulatory processes.

A. House Bill 2284 – Relating to the Practice of Architecture and Engineering

The Executive Director explained to the Board that the Texas Society of Architects and the Texas Society of Professional Engineers actively worked on this bill together. The bill clarifies the distinctions between the professions of architecture and engineering and creates a process for engineers to be permitted to engage in the practice of architecture. The Executive Director addressed a flow chart depicting the engineer application process. Under the bill, engineer applicants must submit evidence of completely designing three building projects. The flow chart envisions a committee of the Board reviewing the applicants' design materials. The Board determined the committee will consist of two architects and one public member and it was decided there should be alternates. If the Board declines an application, the applicant can take his case forward to the State Office of Administrative Hearings (SOAH). SOAH would make the final decision on the application. The case would not be presented to the Board for their vote. If SOAH denies the application, the applicant would have the opportunity to file an appeal at the Travis County District Court.

The Board discussed the number of applications that were anticipated to be filed. The General Counsel stated that he had heard that 30 applications may be filed,

but the Deputy Executive Director from the TBPE stated that it could be around 100.

The Chair proposed that the reviewing committee be made up of the following board members: Charles (Chuck) Anastos (architect); Debra J. Dockery (architect) and Brandon Pinson (public member). Alternate board members would be Bert Mijares (architect) and Chase Bearden (public member). He asked the Board members to consider those proposed appointments and let him know if they seemed acceptable. A motion was introduced for the acceptance of staff's flowchart on HB 2284 and the committee makeup of 2 architects and one public member.

A MOTION WAS MADE (Mijares/Anastos) TO ACCEPT STAFF'S FLOWCHART REGARDING HB 2284 AND ACCEPT THE COMMITTEE MAKEUP CONSISTING OF TWO (2) ARCHITECTS AND ONE PUBLIC MEMBER. THE MOTION PASSED UNANIMOUSLY.

The Board recessed at 10:48 a.m. for a break.

The Board reconvened at 11:00 a.m.

5. Prospective rule revisions to implement HB 2284 upon taking effect

- A. Amend Rule §7.10 to include an application fee to recover the costs of review and processing applications filed by engineers to engage in architecture under the bill

A MOTION WAS MADE (Anastos/Mijares) TO PROPOSE THE AMENDMENT TO §7.10 TO CHARGE A \$150.00 APPLICATION FEE TO ENGINEERS SEEKING PLACEMENT ON THE LIST OF ENGINEERS WHO APPLY TO PRACTICE ARCHITECTURE. THE MOTION PASSED UNANIMOUSLY.

- B. Repeal Rule §1.12 relating to the joint advisory committee on architecture and engineering

A MOTION WAS MADE (Steinbrueck/Mijares) TO REPEAL RULE 1.12 CONTINGENT UPON HB 2284'S PASSAGE. THE MOTION PASSED UNANIMOUSLY.

- C. Amend or repeal Rule §1.210 relating to the meaning of the term "architectural plans and specifications" under certain circumstances

A MOTION WAS MADE (Anastos/Mijares) TO AMEND §1.210 TO COINCIDE WITH THE LANGUAGE WITH PASSAGE OF HB 2284 IN ORDER TO KEEP THE RULE AND MODIFY THE LANGUAGE.

Board member Debra J. Dockery questioned whether the Board should repeal the rule or replace the rule. She wanted to know if there were parts of the rule that the Board wanted to retain. The General Counsel stated that the Chair could delegate this issue to staff for further clarification on the amendment. The Chair agreed.

THE PROPOSED MOTION WAS WITHDRAWN (Anastos/Mijares). Recommendation was to direct staff to develop amendments to the rule. No formal action was required.

7. Enforcement Cases

Review and possibly adopt ED's recommendation in the following enforcement cases:

The Chair recognized TBAE Managing Litigator, Michael Shirk, to present the enforcement cases. Mr. Shirk directed the Board members to the enforcement cases which involved proposed Agreed Orders and/or Settlements previously entered into with the Respondents.

A. Registrants

Boggess, David (#027-11A – TDLR)

A MOTION WAS MADE AND SECONDED (Mijares/Pinson) TO APPROVE THE PROPOSED AGREED SETTLEMENT IMPOSING AN ADMINISTRATIVE PENALTY OF \$500.00 IN VIOLATION OF TBAE RULE 1.170. THE MOTION PASSED UNANIMOUSLY.

Cowan, Stanley R. and MESA Design (#018-10L)

A MOTION WAS MADE AND SECONDED (Steinbrueck/Anastos) TO APPROVE THE PROPOSED AGREED SETTLEMENT IMPOSING AN ADMINISTRATIVE PENALTY OF \$8,000.00 IN VIOLATION OF TBAE RULES 3.144 and 3.146. THE MOTION PASSED UNANIMOUSLY.

Walker, David L. (#107-09A) – Board member Charles (Chuck) Anastos recused himself from the case.

A MOTION WAS MADE AND SECONDED (Mijares/Bearden) TO APPROVE THE PROPOSED AGREED SETTLEMENT RECOMMENDING THAT RESPONDENT'S ARCHITECTURAL REGISTRATION BE SUSPENDED FOR A PERIOD OF ONE YEAR DURING WHICH HE MAY NOT ENGAGE IN THE PRACTICE OF ARCHITECTURE, BUT THAT THIS SUSPENSION BE ABATED FOR A PERIOD OF 18 MONTHS CONTINGENT UPON HIS COMPLIANCE WITH ALL TERMS OF THE AGREED ORDER ISSUED BY TDLR AND COMPLIANCE WITH ALL STATUTORY AND REGULATORY RESPONSIBILITIES WHICH ARISE OUT OF HIS STATUS AS A REGISTERED ARCHITECT IN VIOLATION OF TBAE RULE 1.142(a).

The Board questioned the language of the terms of the agreed settlement.

A MOTION WAS MADE AND SECONDED (Mijares/Bearden) TO AMEND THE LANGUAGE IN THE AGREED SETTLEMENT FOR HIS ARCHITECTURAL REGISTRATION TO BE ABATED FOR 12 MONTHS RATHER THAN 18 MONTHS.

THE MOTION AS AMENDED PASSED WITH 7 MEMBERS VOTING IN FAVOR OF THE MOTION AND ONE OPPOSED (Steinbrueck) AND ONE RECUSAL (Anastos).

The Board recessed at 12:02 a.m. for lunch and reconvened at 1:02 p.m.

B. Continuing Education:

Engel, Douglas L. (#048-11A)

A MOTION WAS MADE AND SECONDED (Pinson/Anastos) TO APPROVE THE PROPOSED AGREED SETTLEMENT IMPOSING AN ADMINISTRATIVE PENALTY OF \$1,200.00 FOR VIOLATION OF BOARD RULES 1.69(f) and 1.69(g). THE MOTION PASSED UNANIMOUSLY.

Epperson, Donald (#060-11A)

A MOTION WAS MADE AND SECONDED (Pinson/Odell) TO APPROVE THE PROPOSED AGREED SETTLEMENT IMPOSING AN ADMINISTRATIVE PENALTY OF \$500.00 FOR VIOLATION OF BOARD RULE 1.69(f). THE MOTION PASSED UNANIMOUSLY.

Kennedy, Michael (#081-11A) – Board member Sonya Odell recused herself from the case.

A MOTION WAS MADE AND SECONDED (Mijares/Anastos) TO APPROVE THE PROPOSED AGREED SETTLEMENT IMPOSING AN ADMINISTRATIVE PENALTY OF \$500.00 FOR VIOLATION OF BOARD RULE 1.69(f). THE MOTION PASSED UNANIMOUSLY BY MEMBERS VOTING (Odell did not vote due to contact with Respondent.)

Key, Delores (#111-08I)

A MOTION WAS MADE AND SECONDED (Mijares/Anastos) TO APPROVE THE PROPOSED AGREED SETTLEMENT IMPOSING AN ADMINISTRATIVE PENALTY OF \$250.00 IN VIOLATION OF BOARD RULE 5.181. THE MOTION PASSED UNANIMOUSLY.

Kuan, Niann-Chyi (#058-11A)

A MOTION WAS MADE AND SECONDED (Mijares/Pinson) TO APPROVE THE PROPOSED AGREED SETTLEMENT IMPOSING AN ADMINISTRATIVE PENALTY OF \$1,200.00 IN VIOLATION OF BOARD RULES 1.69(f) and 1.69(g). THE MOTION PASSED UNANIMOUSLY.

Lawrence, Charles Mell (#183-11A)

A MOTION WAS MADE AND SECONDED (Mijares/Anastos) TO APPROVE THE PROPOSED AGREED SETTLEMENT IMPOSING AN ADMINISTRATIVE PENALTY OF \$250.00 IN VIOLATION OF BOARD RULE 1.171. THE MOTION PASSED UNANIMOUSLY.

McCracken, William Laurin (#053-11A)

A MOTION WAS MADE AND SECONDED (Mijares/Pinson) TO APPROVE THE PROPOSED AGREED SETTLEMENT IMPOSING AN ADMINISTRATIVE PENALTY OF \$1,200.00 IN VIOLATION OF BOARD RULES 1.69(f) and 1.69(g). THE MOTION PASSED UNANIMOUSLY.

Rabke, Perry Dale (#084-11A)

A MOTION WAS MADE AND SECONDED (Mijares/Anastos) TO APPROVE THE PROPOSED AGREED SETTLEMENT IMPOSING AN ADMINISTRATIVE PENALTY

OF \$250.00 IN VIOLATION OF BOARD RULE 1.171. THE MOTION PASSED UNANIMOUSLY.

Zickler, Anissa (#045-11A)

A MOTION WAS MADE AND SECONDED (Mijares/Pinson) TO APPROVE THE PROPOSED AGREED SETTLEMENT IMPOSING AN ADMINISTRATIVE PENALTY OF \$1,200.00 IN VIOLATION OF BOARD RULES 1.69(f) and 1.69(g). THE MOTION PASSED UNANIMOUSLY.

Board member Chase Bearden asked questions regarding random audits and their compliance and whether there was a need to increase the amount of audits. The Executive Director stated that the agency was currently auditing 5% of each profession, but the agency was going to begin a pilot program increase the audits to 8%.

8. National Council of Architecture Registration Boards (NCARB) Resolutions to be acted upon at the 2011 Annual Meeting and Conference, May 2011 – Direction to TBAE delegates

- A. Resolution 2011-01 – *Legislative Guidelines, Model Law and Model Regulations* Amendments – changes to Continuing Education Requirements**
- B. Resolution 2011-02 – *Model Regulations* Amendment – Changes to the IDP Training Requirements for Initial Registration Standards**
- C. Resolution 2011-03 – *Handbook for Interns and Architects* Amendment – Modifications to BEA Requirements**
- D. Resolution 2011-04 – *Handbook for Interns and Architects* Amendment – Requirements for Certification of Foreign Architects**
- E. Resolution 2011-05 – *Handbook for Interns and Architects* Amendment – Correction of ARE 4.0 Exam Equivalents**
- F. Resolution 2011-06 – *Handbook for Interns and Architects* Amendment – Reinstatement of Revoked Certificate**
- G. Resolution 2011-07 – *Handbook for Interns and Architects* Amendment – Definition of “In Process”**
- H. Resolution 2011-08 – *Bylaws* Amendment – Membership Dues**
- I. Resolution 2011-09 – *Bylaws* Amendment – Audit Committee**
- J. Resolution 2011-10 – *Bylaws* Amendment – Treasurer’s Responsibilities**
- K. Resolution 2011-11 – *Bylaws* Amendment – Committee Descriptions**
- L. Resolution 2011-12 – *Bylaws* Amendment – Reinstatement of Membership**
- M. Resolution 2011-13 – *Bylaws* Amendment – Omnibus Incidental Bylaw Changes**

The Chair explained to the Board that he would like to consider voting for the NCARB Resolutions as one item in the nature of a consent agenda. The Chair asked if there were any resolutions any Board member would like to take up separately, outside of the consent agenda, for additional discussion. Board member Diane Steinbrueck disagreed and requested that NCARB Resolution 2011-01 be discussed and voted on separately. He agreed.

A MOTION WAS MADE AND SECONDED (Anastos/Mijares) TO ACCEPT AND SUPPORT NCARB RESOLUTIONS 2011-02-2011-13 AS WRITTEN. THE MOTION PASSED UNANIMOUSLY.

The Chair explained that by passing this motion, Texas has instructed our delegates to vote in support of those resolutions at the NCARB meeting.

The Board discussed NCARB Resolution 2011-02 at length. The Resolution amends NCARB's Model Law to require architects to complete 12 hours of continuing education training annually. It also describes in greater detail the substance of required continuing education. It also would require reporting continuing education on a calendar year basis. Chad Davis noted TBAE often applied a uniform standard to all three professions and he disagreed with supporting this resolution to the extent that it might be applied to landscape architects. Board member Sonya Odell also disagreed with supporting the resolution. The Chair noted that the Resolution calls for NCARB to modify NCARB's model law and would have no effect on the law in Texas or the standards applied by TBAE. He noted that NCARB had conducted a study and learned that the states are anything but uniform in required continuing education but 12 hours seemed to be requirement imposed by a plurality of states. NCARB is seeking to find and encourage uniformity when it can to aid in reciprocal licensure.

A MOTION WAS MADE AND SECONDED (Anastos/Mijares) TO INSTRUCT THE TEXAS DELEGATES FROM THIS BOARD APPROVE AND SUPPORT NCARB RESOLUTION 2011-01 FOR ARCHITECTS ONLY, NOT FOR LANDSCAPE ARCHITECTS AND REGISTERED INTERIOR DESIGNERS. A MOTION PASSED WITH SEVEN VOTING IN FAVOR AND ONE IN OPPOSITION (Odell).

4. Executive Director Report – Agency Update

A. Budget Review

The new Accounting Manager, Kenneth Liles, introduced himself to the Board and directed the Board to the budget for review. He stated that this was the budget that the Board approved in January 2011. In addition, he gave the Board background information on the audit which was requested through the Executive Committee. He explained to the Board that the audit, which the auditing firm would refer to as a management review, had been completed and a report is due on or before June 30, 2011. He stated that he and the General Counsel have an exit interview scheduled with the auditors on June 20, 2011. He indicated that none of the discussions with the auditors have indicated that there are any serious issues or concerns in the agency's processes. The Chair said that he would like the auditors to attend the next Board meeting scheduled for August to explain to the Board members the extent and the findings of the audit. Board member Paula Miller agreed that the auditors should make a presentation to the full Board. Board member Bert Mijares said that he wanted a full copy of the audit report prior to the August Board meeting if they plan on making their presentation at that time.

The Board recessed at 2:45 p.m. for a break and reconvened at 3:00 p.m. in closed session to confer with legal counsel regarding pending litigation against the Board.

9. Legal counsel briefing on recent developments regarding litigation

A. TSPE v. TBAE and Cathy L. Hendricks in her official capacity as Executive Director

B. Richardson, Rogers and Winton v. TBAE

The Board adjourned the closed meeting at 4:07 p.m. and reconvened in open meeting at that time.

4. Executive Director Report

Report on Conferences and Meetings

C. CLARB 2011 Spring Meeting (February 25-26, 2011)

Board member Diane Steinbrueck and Executive Director, Cathy Hendricks attended the meeting in Denver, Colorado. They reported that the meeting focused on the definition of the term "welfare." Ms. Hendricks explained that the organization had hired a consultant to research the meaning of welfare. They are also doing a study on LARE and practice analysis. The meeting was only one and one-half days. The fall meeting scheduled in September will be held in Chicago, IL.

D. NCARB Mid-Atlantic Conference (March 10-12, 2011)

The Chair and Mr. Mijares attended this meeting. Mr. Vidaurri was re-elected as Treasurer for Region 3. They reported that there was discussion about eliminating Region I. They stated that the Board was going to reduce 6 regions to 4 or 5 regions. Also, they announced that Lenore Lucey would be leaving the council and the new CEO would be Michael J. Armstrong. He is an attorney who has specialized in land use planning. They said that the next meeting will take place in June in Minnesota, MN. Also the 2013 Joint Regional Meeting will be hosted by Texas, but held in Alabama.

The Executive Director thanked the three professional societies for collaborating on common interests during the legislative session. In addition, she thanked the legislative team at TBAE which included Scott Gibson, Glenda Best and Glenn Garry for their contributions during the session.

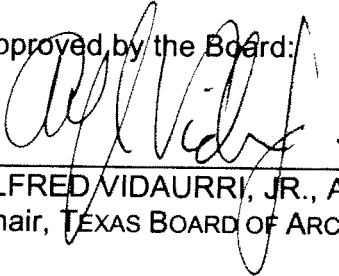
12. Chair's Closing Remarks

The Chair thanked the audience for attending the meeting and the Board for being so efficient in their work and getting through the agenda in one day.

11. Adjournment

A MOTION WAS MADE AND SECONDED (Anastos/Mijares) TO ADJOURN THE MEETING AT 4:20 P.M. THE MOTION PASSED UNANIMOUSLY.

Approved by the Board:



ALFRED VIDAURRI, JR., AIA, NCARB, AICP
Chair, TEXAS BOARD OF ARCHITECTURAL EXAMINERS